

116TH CONGRESS  
1ST SESSION

# S. 1038

To strengthen highway funding in the near term, to offer States additional financing tools, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 4, 2019

Mrs. FISCHER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To strengthen highway funding in the near term, to offer States additional financing tools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Build USA Infrastruc-  
5 ture Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATION.—The term “Administra-  
9 tion” means the Federal Highway Administration.

1           (2) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Administra-  
3           tion.

4           (3) CORE INFRASTRUCTURE PROJECT.—The  
5           term “core infrastructure project” means a Federal-  
6           aid highway or highway (as those terms are defined  
7           in section 101(a) of title 23, United States Code)  
8           project of a State that is eligible for funding under  
9           chapter 1 of title 23, United States Code.

10          (4) STATE.—The term “State” has the mean-  
11          ing given the term in section 101(a) of title 23,  
12          United States Code.

13 **SEC. 3. ADDRESSING NEAR TERM TRANSPORTATION**  
14 **NEEDS.**

15          Section 105 of title 23, United States Code, is  
16          amended—

17               (1) by redesignating subsection (g) as sub-  
18               section (h); and

19               (2) by inserting after subsection (f) the fol-  
20               lowing:

21          “(g) U.S. CUSTOMS AND BORDER PROTECTION REV-  
22          ENUES.—During the 5-year period beginning on October  
23          1, 2020, the first \$21,400,000,000 of revenues collected  
24          by U.S. Customs and Border Protection during each fiscal  
25          year shall be deposited into the Highway Trust Fund.”.

1 **SEC. 4. HIGHWAY PROJECT FLEXIBILITY FOR STATES.**

2 (a) IN GENERAL.—A State may enter into an agree-  
3 ment with the Administration, for a period of 3 years or  
4 longer, under which, during each fiscal year of the agree-  
5 ment, the State agrees—

6 (1) to opt out of receiving 60 percent or greater  
7 of the amount authorized out of the Highway Trust  
8 Fund that the State would have received for Fed-  
9 eral-aid highway activities under section 119(d) or  
10 133(b) of title 23, United States Code, for that fis-  
11 cal year, and a corresponding amount of any appli-  
12 cable obligation limitation;

13 (2) in lieu of the amount referred to in para-  
14 graph (1), to accept from the Administration an  
15 amount equal to 90 percent of that amount and a  
16 corresponding amount of any applicable obligation  
17 limitation; and

18 (3) to use the amount received from the Admin-  
19 istration under paragraph (2) to carry out core in-  
20 frastructure projects in accordance with this section.

21 (b) AMOUNT OF OPT-OUT.—

22 (1) IN GENERAL.—The amount described in  
23 subsection (a)(1) shall not include any amounts re-  
24 quired to be set aside, any penalties, or any amounts  
25 required to be suballocated to areas based on popu-  
26 lation.

1           (2) EFFECT ON CERTAIN PROVISIONS.—If a  
 2           State enters into an agreement under subsection (a),  
 3           the calculation under section 133(d)(1) of title 23,  
 4           United States Code, shall be determined as if the  
 5           State had not entered into the agreement.

6           (c) TREATMENT OF FUNDS.—

7           (1) IN GENERAL.—Except as otherwise pro-  
 8           vided in this Act, amounts received by a State under  
 9           an agreement under subsection (a) shall be available  
 10          for obligation and administered as if apportioned  
 11          under chapter 1 of title 23, United States Code.

12          (2) DISADVANTAGED BUSINESS ENTER-  
 13          PRISES.—Section 1101(b) of the FAST Act (23  
 14          U.S.C. 101 note; Public Law 114–94) shall apply to  
 15          amounts received by a State under an agreement  
 16          under subsection (a) as if those amounts were made  
 17          available under title I of that Act.

18          (d) STATE DETERMINATION OF COMPLIANCE.—Not-  
 19          withstanding any other provision of law, in carrying out  
 20          a core infrastructure project in accordance with this sub-  
 21          section, a State—

22               (1) shall determine whether the State is in com-  
 23               pliance with all Federal requirements of—

24                       (A) environmental approvals relating to the  
 25               project;

1 (B) environmental permits relating to the  
2 project;

3 (C) section 313 of title 23, United States  
4 Code;

5 (D) the development and construction of  
6 the project, including preliminary design, right-  
7 of-way acquisition, construction engineering,  
8 and final acceptance of the project;

9 (E) preapproval for preventative mainte-  
10 nance projects and procedures;

11 (F) project agreements and modifications  
12 to project agreements; and

13 (G) consultant procurement services relat-  
14 ing to the project; and

15 (2) shall assume responsibility of and oversight  
16 duties over compliance with all applicable require-  
17 ments.

18 (e) JUDICIAL REVIEW.—The determination of a  
19 State under subsection (d)(1) shall not be subject to judi-  
20 cial review.

21 (f) RULEMAKING.—The Administrator shall issue  
22 such regulations as may be necessary to carry out this  
23 section.

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